SUPREME COURT OF THE UNITED STATES,

October Term, 1941

SALLIE KEARNY, Executrix of the Estate of William H. Kearny, Deceased,

Petitioner,

vs.

No. 792

FRANK O. LOWDEN, JAMES E. GORMAN and JOSEPH B. FLEMING, Trustees of the Estate of The Chicago, Rock Island and Pacific Railway Company, a corporation; and J. W. KURE and JOHN S. LOWSDALE, Trustees of the Estate of St. Louis-San Francisco Railway Company,

Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING AND BRIEF IN SUPPORT THEREOF OUT OF TIME

Comes now the above named petitioner and asks leave and permission of this Honorable Court to file her petition for rehearing and reconsideration and brief in support thereof out of time for the following reasons, to-wit:

Because said petition was not filed in due time on account of any intention, negligence or inadvertence of petitioner or her counsel but because of reasons wholly beyond the power or control of either; that a package containing forty copies of said petition were delivered to the Air Express Division of the Railway Express Agency, Inc., at Kansas City, Missouri, at 6:08 o'clock P. M. on Thursday February 5th, 1942, and left Kansas City at 9:20 P. M., by airplane, Flight No. 2, Transcontinental & Western Air, Inc., and should have arrived in Washington, D. C., at 5:20 A. M. and been delivered to the Clerk of the Supreme Court by 9:00 A. M. Friday February 6th, 1942, in due time, but that for some reason unknown to this petitioner, said package containing said forty copies of said petition did not arrive in Washington to be delivered on Friday, February 6th, in the usual course of business, and petitioner attaches hereto as an exhibit the original Uniform Express Receipt received at the time said package was delivered to said Railway Express Agency, Inc. for transportation.

Petitioner further states that forty copies of said petition and brief in support thereof have now been received and are in the hands of the Clerk of this Honorable Court.

WHEREFORE, petitioner prays this Honorable Court for leave and permission to file said petition for rehearing and reconsideration and brief in support thereof out of time as of the date when said petition and brief were actually received by Hon. Charles Elmore Cropley, Clerk of this Honorable Court, or such other time as the Court may designate.

BAILIE BOGART, Petitioner,
By _____
Counsel for Petitioner.

STATE OF MISSOURI,
) ss.
COUNTY OF JACKSON.)

Clarence S. Chilcott, of lawful age, being first duly sworn, upon his oath deposeth and saith that he has read the above and foregoing motion for permission to file petition for rehearing and reconsideration and brief in support thereof, and states that the contents thereof are true to his best knowledge and belief.

_____

Subscribed and sworn to before me this 11th day of February, 1943.

My commission expires: June 8, 1945.

_____
Notary Public, Jackson County, Missouri.